

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
APPELLATE SIDE**

**APPEAL FROM ORDER NO. 610 OF 2004.**

1. Shri Ali Ahmed S/o Ahmed  
Mohamed Kohati,

2. Smt.Sharifa W/o Ali Ahmed  
Kohati.

... Appellants.

V/s.

1. The Union of India,

2. The State of Maharashtra. ... Respondents.

H.A.Solkar for the appellants.

R.V.Govilkar for the respondents.

**CORAM: V.C. DAGA, J.**

**DATE : 19th August 2004.**

**P.C.:**

. Heard learned counsel for the rival  
parties.

2. This appeal is directed against the  
order dated 21st April, 2004 passed by the City  
Civil Court at Bombay while rejecting the Notice of  
Motion No.2916 of 2003 in S.C.Suit No.3686 of 2003.

**Facts :**

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3. The appellants are the original  
plaintiffs. Appellants filed suit being S.C.Suit

No.3686 of 2003 to seek declaration that the orders dated 9th February, 1989 and 28th July, 2003 are illegal, void and of no legal effect whatever and permanent injunction retraining the defendants from deporting the plaintiffs out of India or taking any action against the plaintiffs under the Foreigners Act.

4. In the above suit, Notice of Motion No.2916 of 2003 to seek interim relief; in terms of prayer clause (a); to restrain the defendants from deporting the plaintiffs out of India and/or taking any action against them under the Foreigners Act, came to be moved. The said motion was opposed by the defendants. After hearing the parties to the motion, learned trial Court, vide its order dated 21st April, 2003, was pleased to dismiss said notice of motion. This order rejecting notice of motion is the subject matter of challenge in this appeal.

5. While considering this appeal it is necessary to examine the legality of the impugned orders to find out whether or not prima facie; case is made out by the plaintiffs/ appellants herein. The plaintiffs in the plaint have alleged that on or about 21st November, 1979 plaintiffs received from defendant No.1 notices dated 27th August, 1979 calling upon them to prove that they

had not voluntarily acquired the citizenship of Pakistan. By separate replies dated 15th February, 1980, plaintiffs requested defendant No.1 to furnish them the evidence on which it desired to rely for holding that plaintiffs had voluntarily acquired the citizenship of Pakistan.

6. The plaintiffs did not receive any reply to the said letters and after 8 years and 4 months i.e. on 1st July 1988, plaintiff No.1 alone received a memorandum from the Under Secretary to defendant No.1 informing him that defendants have decided to grant opportunity of personal hearing and that he should appear either in person or through his advocate before the said Under Secretary on 15th July, 1988 with all the necessary documents. Ultimately, after brief correspondence, personal hearing was given to plaintiff No.1 alone. He was heard by one Mr.H.S.Hampal, Under Secretary to defendant No.1. The plaintiff No.1 claimed to have cited some judgments including that of Apex Court reported in AIR 1974 SC 645 (**The State of Gujarat v. Yakub Ibrahim**). Thereafter, plaintiff did not hear anything for about 2 years.

7. On or about 26th July, 1990 plaintiffs were called to the S.B.I., C.I.D. office, Mumbai. They were served with an order dated 3rd February, 1989 passed by one Mr.K.Subramaniam, Deputy

Secretary to defendant No.1 under which it was held that both the plaintiffs had voluntarily acquired citizenship of Pakistan.

8. Being aggrieved by the aforesaid order dated 3rd February, 1989, a suit came to be filed to challenge the validity of the said order. One of the contentions in the suit is that plaintiff No.1 was heard by Mr.H.S.Hampal, Under Secretary to defendant No.1, whereas order has been passed by Mr.K.Subramaniam, Deputy Secretary to defendant No.1 who had no opportunity to hear plaintiff No.1. Second ground was raised that no personal hearing was given to plaintiff No.2. Plaintiff No.2 did not receive any communication from the defendants after 21st November, 1979.

**Submissions :**

9. Learned counsel for the appellants/ plaintiffs contend that the impugned orders are contrary to the well established principles of natural justice. He submits that plaintiff No.2 was never given an opportunity of personal hearing before passing the impugned orders, whereas similar opportunity was given to plaintiff No.1. This, according to him, amounts to discrimination violative of Article 14 of the Constitution as such the impugned orders are void ab initio.

10. Learned counsel for the appellants/ plaintiffs further urged that the impugned orders passed against the plaintiffs are unsustainable in the eye of law in view of the fact that the person who had heard him did not pass any order but the order was passed by some other officer, who had no opportunity to hear oral submissions advanced by him.

11. Learned counsel for the plaintiffs reiterated that the impugned order is liable to be quashed and set aside being in breach of the principles of natural justice. He placed reliance on the judgment of the Apex Court in the case of **G.Nageswara Rao v. A.P.S.R.T.Corp.**, AIR 1959 SC 308; **M/s.Bharat Barrel and Drum Mfg. Co. v. L.K.Bose and others**, AIR 1967 SC 361 and **Union of India v. P.K.Roy**, AIR 1968 SC 850. He submits that if the hearing was given by one person and order is passed by another, then, in that event, such order cannot be said to be legal and valid order.

12. Learned counsel for the appellants further submits that delay in passing the order has also resulted in not considering the questions and issues raised by plaintiff No.1. He invited my attention to the impugned order and tried to

establish that the submissions made were not taken into account. There is absolutely no reference to the Apex Court judgment sought to be relied upon by plaintiff No.1. There is no denial that no such judgment was cited at the time of hearing.

13. Mr.Solkar, learned counsel for the appellants further reiterated that no personal hearing was given to plaintiff No.2. She did not receive any communication and, therefore, the order dated 3rd February, 1989 is in breach of the principles of natural justice.

14. Per contra, Mr.Govilkar, learned counsel for the respondents submits that even if the order is passed by the officer other than the officer who had heard plaintiff No.1 that by itself will not amount to breach of principles of natural justice. He pressed into service Two Bench judgment of the Apex Court in the case of **Ossein and Gelatine Manufacturers' Association of India v. Modi Alkalies and Chemicals Ltd.**, AIR 1990 SC 1744. So far as absence of consideration of some of the grounds raised by plaintiff No.1, based on Apex Court judgment in the case of **The State of Gujarat v. Yakub Ibrahim** (supra) is concerned, he submits that the Court should go by the order and facts stated therein.

15. So far as absence of notice to plaintiff No.2 is concerned, he tried to justify absence of notice, however, he could not take his submission to the logical end.

**Consideration :**  
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16. Considering rival issues, let me examine whether or not prima facie case is made out by the appellants/ original plaintiffs. The Apex Court in the case of **Martin Burn Ltd. v. R.N.Banerjee**, AIR 1958 SC 79 laid down parameters for determining prima facie case in the following words:

"..... While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence let it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. It may be that the Tribunal considering this question may itself have arrived at a different conclusion. It has, however, not to substitute its own judgment for the judgment in question. It has only got to consider whether the view taken is a possible view on the evidence on the record."

(Emphasis supplied)

The question is: if the evidence is let, is it possible at the conclusion of the trial to accept the contentions canvassed by the appellants. All these contentions advanced; by the appellants need

consideration. They are all debatable issues. They will have to be considered by the trial Court during the course of trial of the suit. They will have to be adjudicated upon on its own merits. At this stage, without recording any conclusive finding with respect to the legality of the impugned action of the defendants, I hold that the plaintiffs have made out a prima facie case. Balance of convenience is also in favour of the plaintiffs. Once if they are deported from the country, they would suffer loss which can hardly be compensated in terms of money. The same consideration will hold good so far as legal injury which they may suffer on account of refusal to grant injunction resulting in their deportation. The learned counsel for the appellants during the course of hearing suggested that the respondents may consider the feasibility of affording fresh opportunity of hearing to them without getting into the legal debate, so that the suit itself can be withdrawn by them. However, this suggestion did not find favour with the respondents. In the above view of the matter, trial Court was not justified in rejecting notice of motion moved by the appellants. The impugned order is, thus, set aside. Appeal is allowed. The notice of motion is made absolute in terms of prayer clause (a).

17. The trial Court is directed to try the suit in question and dispose it of as expeditiously as possible, at any rate, within one year from the date of receipt of the copy of this order. No order as to costs.

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